

9 TH MEETING OF THE COUNCIL OF ASEAN CHIEF JUSTICES:

Update by ASEAN Judiciaries on COVID-19 Effects and Solutions

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The office of the President of the Supreme Court of Thailand

Measures to Handle Court Proceedings in Time of Pandemic

In Thailand we have to adopt and change our measures from time to time because of the changing situation of the outbreak. During the last part of 2020, we had the window of opportunity to dispose and clear out several cases because the seriousness of the pandemic was not too much, therefore a large number of cases had been disposed of during that time. But at the beginning of this year, the situation has become worse with a high level of infection in Thailand. The court had to change and adapt measures again.

One of the biggest problems we confronted was the outbreak in prisons that caused the department of correction to quarantine most all of prisoners and detainees in prisons. That created many problems and difficulties for the court proceeding because we could not bring out prisoners or detainees to participate in the court proceedings. In that regard, the Court of Justice of Thailand adopted a number of measures to deal with the situation. The first measure is that we encourage and promote the use of risk assessment mechanism. In this mechanism, we try to evaluate the risk of absconding of the accused and the court will retain the accused in the prison only when there is extreme necessity because the more accused retained in the prison, the more risk of pandemic in prisons. That is why we promote the use of risk assessment mechanism to differentiate between the accused who doesn't have high risk of absconding and the accused who have high risk. Moreover, we provided special mechanism for the accused or their relatives to file an online request for bail for the court to grant provisional release in criminal cases because during the pandemic time, it is

difficult for the relatives of the accused to come to the court and file the request for provisional release. Consequently, there are more accused that released from prisons. In addition to the platform to file online requests for provisional release and the use of risk assessment mechanism mentioned before, the court adopted various measures to ensure that there will be more accused or defendants be released from prisons. For example, the court encourage and promote use of community supervisors. In this scheme, the court appoints a local leader in community of the accused to supervise the accused or the defendant, therefore, the need for a large amount of bail will be reduced and whereby more numbers of accused or defendant can be released on bail or without bail.

By the result of the pandemic faced throughout by ASEAN judiciaries, online hearing became common place. One of the measure the court applied is online request for appointment of Administrator of the Estate of a Deceased. In Thailand, even before the pandemic we have a facility to accommodate the party to file this kind of request without assistance of the lawyer. When there is pandemic, the parties would be affected because it is more difficult for them to carry out this procedure. The court created online platform for such parties to file an online request for the court order to appoint the administrator of the estate of a deceased.

The next measure adopted is that the court also created the platform to facilitate the so-called Self – Represented Litigants to file the case or request to the court as well. Similar to the abovementioned measure, this kind of litigants also have difficulties to access to the court service as well.

The next measure is online mediation. In Thailand, courts do online mediation as well as other ASEAN countries. One of the issues occurred in the online mediation is that when parties can agree upon the settlement agreement, there is no mechanism to facilitate the making of settlement agreement via online mechanism. Therefore, the court set up the protocol and the procedure for parties to enter into the settlement agreement online and

also request the court to render a judgement on agreement term on the consent judgement to facilitate the more use of online mediation as well.

Similar to other ASEAN Countries, the court in Thailand also created Virtual Private Network-VPN for judges to conduct their proceedings from their home for more safety measure for judges and facilitate the conduct of the court proceedings as well.

The second part is the plan of the Court of Justice to live with the Covid-19 and to conduct the court proceedings during pandemic. I believe that ASEAN share the same challenges and issues. For example, courts have to balance rights of all stakeholders, especially rights of the accused in criminal prosecution because there is a complaint by the defense lawyer that to cross examine via the online platform is quite different from cross examine witnesses in the onsite courtroom and avoid the delayed justice as well. Courts also have to devote the needs of those who are not technology-savvy because not all parties have a capability to access to the technology.

To conduct further proceedings, courts also have to make sure that we have sufficient safeguarding procedure for court personnel and judges as well. In the near future to create more safety for judges and people in the courtroom, we tried to install a number of measures to ensure the physical safety in the courtrooms. In this mechanism we installed the screening process for parties to enter a courtroom to differentiate people who have higher risk and not allow them to participate in the proceedings in courtroom. We installed the acrylic screens at the bench, witness stand and lawyer's area. We supplied ATK rapid antigen test kits to the courts personnel to test themselves from time to time to make sure that there is no risk to spread Covid-19 in the court.

Just as in other ASEAN countries, we foresee in the near future there must be some kind of hybrid case management. We have to divide the type, the nature and character of the cases

into different tracks and some of those cases may be more suitable for online proceedings or online hearing while some kind of proceedings you will need off line or onsite proceedings.

We also have legal issues regarding the conduct of online procedure as well especially in criminal cases or criminal prosecution. Because in Thailand we have the guaranteed rights for accused or defendants to confront the witness, therefore, in this regard there are still issues to figure out how should we proceed with this right of confrontation in the time of pandemic on the online environment. So currently the Court of Justice of Thailand has proposed a bill to change the criminal procedure law to accommodate this kind of online hearing.

Thank you.